

the sense that both the inchoate and the consummated offence, are alleged in the same charge. There is thus no question of any infraction of section 163 of the Criminal Procedure Code. The real test in all these cases is whether the accused person gets sufficient certain notice of what is charged against him. Here I think that in spite of the inartistic words it is quite clear both from the inclusion of the words "in order to the committing of extortion" and the reference to section 385 that what was alleged against him was not the consummated offence but the inchoate offence.

Then it was said that the evidence of identity of voices was inadmissible. Here we must be clear as to what that evidence was. There was no question of putting in evidence statements made to Police officers in the course of a Police investigation which so often proves fatal to identity parade evidence. The evidence of each of the complainants was that at the Police Station he heard a number of voices on the telephone and picked out one of those voices as the voice which had spoken to him at the time of the attempted extortion. Then there was the evidence of a Police officer that in each case the voice to which the witness referred in his evidence before the Magistrate was in fact the voice of the accused. What weight is to be attached to such evidence, particularly in the case of Chinese voices, may be a matter of opinion. But it was a matter on which the Magistrate was entitled to form his own opinion and as to its admissibility I can see no reason to quarrel with it.

Finally it was said that the evidence of the handwriting expert was given undue weight.

Such evidence is of course always of very questionable value, particularly in the case of Chinese characters. In the present case it suffered from the additional defect that the expert very candidly admitted that although he had studied the subject for a few months he had had very little practical experience, although it is to be noted as very much in his favour that he avoided the dogmatic assertiveness which is so often characteristic of this type of witness. Had there been no other evidence it would, of course, have been in the highest degree unsafe to convict on this evidence. There is, however, a great deal of other evidence and it is quite impossible to say that the Magistrate attached undue weight to this particular piece of evidence.

In all the circumstances of the case I find I have no option but to dismiss the appeal.

The sentences have not been appealed against. I think, however, I should express the view that although no previous convictions were proved against the appellant they are extremely lenient particularly in view of the prevalence of this type of offence.

Appeal dismissed.

IPOH TOWN COUNCIL & ANOR. v. NG KHOON KHOON (No. 2)

[C. A. (Thomson C.J., Hill and Good J.J.A.) May 30, 1960]

[Ipoh — F.M. Civil Appeal No. 4 of 1960]

Interpretation — Subordinate legislation — "Open development area" — Meaning of — Canons of interpretation.

Local Authority — Town planning — "Open development area" used in Town Council plan — Town Boards Enactment (Cap. 137).

Where an expression is used in any form of legislation, it must be interpreted in accordance with the ordinary canons of interpretation.

Therefore, where the expression "open development area" was used by the Ipoh Town Council as part of a plan which had statutory authority and the learned Judge below had, basing his construction on three considerations: (i) the opinion of experts; (ii) the wording of the reference on the plan itself; and (iii) the development which has taken place in practice in the town of Ipoh, interpreted the expression to mean an area for detached or semi-detached private residences only; on appeal,

Held: (1) the evidence of experts was not admissible;

(2) the only valid consideration for the purpose of construction was the wording of the plan; and

(3) when so interpreted the expression "open development area" meant an area in which the Town Council's discretion to approve buildings was fettered to the extent that user for all industrial purposes or for shophouses or terrace dwellings was prohibited.

Per Thomson C.J.: "What we have to ask is not what persons professionally engaged in the pursuit of town planning mean by it when discussing their own *mystique* among themselves but what meaning would it convey as to the intention of the Town Council when it made the Plan to a prospective purchaser of land or his legal advisers."

Cases referred to:—

(1) *Marquis Camden v. Commissioners of Inland Revenue* [1914] 1 K.B. 641, 647.

(2) *Mansell v. R.* 8 E. & B. 109.

(3) *Commissioners of Inland Revenue v. Duke of Devonshire* [1914] 2 K.B. 627, 640.

COURT OF APPEAL, appeal from the decision of Smith J. reported at p. 103, *post*.

Yeoh Kian Teik for the appellants.

B. K. Das (*N. Sharma* with him) for the respondent.

Cur. Adv. Vult.

Thomson C.J.: - This appeal raises a question of some importance as to the effect of the town planning provisions of the Town Boards Enactment.

The proceedings were commenced by Mr. Ng Khoon Khoon, the respondent to the present appeal, who is the registered proprietor of a piece of land known as Lot No: 37016 lying within the Town of Ipoh on which he has built a dwelling house where he lives with his family. The two adjoining pieces of land, Lots Nos: 37014 and 37015, which are also in the Town of Ipoh, belong to Madam Khoo Chooi Sim as registered proprietor who is not a party to this appeal, although she was heard by her counsel at the trial.

In 1957 Madam Khoo was minded to erect premises on her land to be used as a hotel catering mainly for travellers and as what is called a night-club, the whole establishment to be known as the "Olympic Inn". The erection of any new building in the Town requires the permission of the Town Council and the carrying on of a so-called night-club involves the sale of alcoholic liquor for consumption on the premises and the provision of music and facilities for dancing and requires to be either licensed or exempted from licensing under the Town Board Bye-laws.

In December, 1957, Madam Khoo applied to the Ipoh Town Council for the necessary permission to build the premises in question and was informed that the Council had approved her application in principle. Subsequently plans which she submitted of the proposed building were approved and building operations commenced on her land about April, 1959.

Mr. Ng came to know of Madam Khoo's intentions in February, 1959, and on 17th February, 1959, he wrote a letter to the Chairman of the Town Council objecting to approval being given to the building of a night-club on his neighbour's land. He was informed in reply that the application to erect a night-club had been approved in principle in December, 1957, and that his objection had been received too late to be considered. There was further correspondence between Mr. Ng, or his solicitors, and the Town Council in the course of which Mr. Ng obtained no satisfaction and on 7th December, 1959, he filed notice of an *ex-parte* motion for leave to apply for an order of prohibition against the Ipoh Town Council and its Chairman prohibiting the Council and its Chairman from hearing or determining any application by any person for a licence in respect of Madam Khoo's premises under Bye-law 11 of Part VIII of the Bye-laws made under the Town Boards Enactment or for exemption under Bye-law 13 of the said premises from the requirement of a licence.

These Bye-laws provide *inter alia* that no person shall keep a place to which the public are admitted and where any entertainment or amusement is carried on without a licence issued by the Chairman of the Town Council but that the Chairman may exempt from this provision certain premises licensed under the Theatres Enactment or Places of Public Amusement Enactment. The practical effect of such a prohibition as was asked for would thus be to prevent Madam Khoo's premises from being used as a night-club.

Briefly, the grounds on which the order of prohibition were sought were that by virtue of the application to Ipoh of the town planning provisions contained in the Town Boards Enactment the proposed user of Madam Khoo's land was unlawful and that consequently the approval of building plans in connection with such user was unlawful and the issue of a licence or indeed the doing of any act by the Council purporting to authorise such unlawful user would in itself be unlawful.

A On 9th December, 1959, leave to apply was granted as prayed, certain interlocutory orders with which we are not concerned here were made and service of notice of the application was ordered on the Town Council, on its Chairman and on Madam Khoo Chooi Sim.

B In the event the matter came on for hearing before Smith J., who made an order as asked for by Mr. Ng prohibiting the Town Council and its Chairman from granting a licence or giving exemption from the requirement of a licence for the carrying on of a place of public amusement on the premises.

C Against that decision the Town Council and its Chairman have now appealed.

D Apart from some argument based on alleged *laches* on the part of Mr. Ng which, before us at any rate, was not very seriously pressed and which in any event in my judgment is without substance, I think it is accepted that if the proposed user of Madam Khoo's land is unlawful then Mr. Ng is entitled to the prohibition for which he asks. The only question of substance, then, which has to be decided is whether that proposed user is indeed unlawful.

E That question can suitably be approached by a consideration of the town planning provisions of the Town Boards Enactment and the history, which is not controversial, of the application of these provisions to the Town of Ipoh.

F By section 135 a Town Council has power to prepare what is called a general town plan in respect of the area for which it has been appointed or, and this is important, any part thereof.

Section 136 provides that such a general town plan may "shew or make provision" for certain matters. These were originally set out as follows:—

- G "(a) streets, railways and other main communications;
- (b) zones or districts set apart for use for residential, commercial, industrial, agricultural or other specified uses (hereinafter referred to as 'zoning');
- (c) reserves for Government purposes;
- (d) parks, recreation grounds and similar open spaces."

but since Enactment No: 14 of 1939 have been as follows:—

- H "(a) streets, railways and other main communications;
- (b) zones or districts set apart for use for any type or category that may be stated on such draft plan of residential, commercial, industrial, agricultural or other use and zones or districts (being either the same as or distinct from any of those hereinbefore described) in any one of which the number of houses in any acre shall not exceed the number indicated by the draft plan as the number of houses per acre permitted for that particular zone or district;
- (c) reserves for Government purposes;
- I (d) parks, recreation grounds and similar open spaces;
- (e) building lines; and
- (f) regular lines of street which have been declared under Part VII."

Sections 137, 138, 139 and 140 provide for the advertisement and public inspection of any draft plan which has been prepared under section 135, for the hearing of objections to it

and for its approval with or without amendments or its rejection by the Ruler in Council. If and when it is approved by the Ruler in Council it becomes an approved Plan and is required to be kept exhibited for public inspection.

Section 144 provides that an approved Plan may be amended or replaced by another approved Plan but only after complying with the prescribed procedure for advertising what is intended and calling for and hearing objections.

Section 142 provides that when a draft Plan has been approved copies of it are to be deposited with the Collector of Land Revenue and the Registrar of Titles each of whom is required to make an endorsement on any document of title registered with him in respect of any land comprised in the area of the Plan to the effect that the holding of such land is "subject to the conditions of the approved Plan". Section 145, which in its terms is mandatory, requires that the Town Council shall refuse to approve the Plan of any new building unless such Plan is in conformity with the approved Plan and section 146 provides that, subject to a saving in favour of existing buildings, :—

"no building shall be used for any purpose other than the purpose for which the zone in which such building stands is set apart."

In accordance with these provisions the Ipoh Town Board, as it then was, prepared a draft general town Plan which was approved some time in 1931* and which is known as Ipoh Approved Town Plan No: B. 3.

According to that Plan the area of the town is 7,500 acres. The Plan itself, however, only purports to deal with some 4,855 acres of that area, that is about 60% of the area, which it divides into zones of which the titles and areas are as follows:—

Open Development	-	-	-	2,600 acres
Shop-house Area	-	-	-	290 acres
Terrace-dwelling Area	-	-	-	165 acres
Heavy Industrial Area	-	-	-	322 acres
Light Industrial Area	-	-	-	152 acres
Public Open Space	-	-	-	170 acres
Private Open Space	-	-	-	313 acres
Burial Ground	-	-	-	177 acres
Government Reserves	-	-	-	215 acres
Railway Reserves	-	-	-	251 acres
Roads	-	-	-	200 acres

Mr. Ng's land and Madam Khoo's land are both situated in the portion of the town covered by the Plan and are in the zone which is described as "open development".

As far as I have been able to advise myself, that Plan has never been revoked or except in very minor respects amended in accordance with the provisions of section 144 of the Enactment. It is therefore the only Plan in existence which has any legal validity under the Town Board Enactment. It is not, however, it would appear, the Plan by which the Ipoh Town Council and its functionaries guide their activities. At some

A date, which is not clear but which was probably subsequent to 1950, another Plan came into existence accompanied by a document which purports to be some sort of a key to it. This Plan itself does not differ materially from the approved Plan B.3 except that an extra zone described as a "repair shop area" has been added which, however, does not affect the open development zone which is the only one with which we are concerned in the present proceedings.

The key, however, rightly or wrongly purports to read into the Plan a great deal which does not appear on the face of it and which certainly does not appear anywhere on the approved Plan. This document contains a list of about 120 types of buildings. It then proceeds to state with relation to each of the zones shewn on the Plan to which it refers what groups of buildings are "permitted" in the zone and what groups of buildings are "not permitted". In addition it sets out in relation to each zone groups of buildings which "may be permitted" if of approved design subject to compliance with a procedure for advertising and calling for objections which is set out in the document itself and which has no resemblance to anything contained in the Enactment. With regard to the open development zone, the effect of all this seems to be that if the document had any legal effect detached and semi-detached houses would be permitted, that terrace houses and certain residential buildings and churches but not art galleries nor what are called "courts (law)" might be permitted and that certain buildings would not be permitted. The list of forbidden buildings includes public conveniences and petrol kiosks but excludes crematoria and car parks.

F Here I should pause to make it clear in fairness to the Town Council that at one time they made a rather half-hearted attempt to enact this document as a Town Plan in place of Plan B. 3 but withdrew from the attempt on a functionary in the State Secretariat observing quite erroneously: "This does not change the Town Plan, but merely clarifies what it is intended to convey."

This document attracted a great deal of attention at the trial. I only deal with it now to point out that not only has it no legal validity but it is also completely devoid of any evidential value in the interpretation of the original Plan. It only shows what somebody in 1950 would have liked the Plan to have meant when it was originally enacted in 1931.

The real question and indeed the only question which had to be decided at the trial was whether the proposed user of Madam Khoo's land was unlawful by reason of a restrictive condition which had been placed upon her grant of land under section 142 of the Town Boards Enactment. At the hearing of the appeal we were told by counsel that although the document of title was not produced in evidence it was in fact endorsed in accordance with the section.

As has been said the land in question lies within the zone which is designated "open

* See F.M.S., 'Gazette' of 10th April, 1931, Notification No. 2846.

development" in town Plan B. 3 and the question, therefore, is whether being situated in that zone the proposed user is lawful. It is not a question of whether or not it is in accordance with any so-called principles of town planning based apparently on such assumptions as to human needs as that a crematorium is a more desirable thing in a residential area than a public convenience. Nor, so far as the present proceedings are concerned, is there any question of whether the proposed user is likely to cause annoyance to the neighbours. It is a question of the interpretation of a condition restricting or purporting to restrict the user of the land which has been placed upon the title to the land and placed there moreover by what amounts to a piece of legislation enacted by the Town Council in pursuance of the powers given to it by statute just as in pursuance of its other powers it enacts Bye-laws.

That restriction is to the effect that the land cannot lawfully be used for any purpose that cannot be said to fall within the meaning of the expression "open development" and that expression accordingly must be considered with a view to ascertaining whether the proposed user of Madam Khoo's land falls within its four walls.

Smith J. took the view that the proposed user did not fall within the scope of "open development". Not unnaturally he found great difficulty in attributing any very precise meaning to that expression when considered in isolation. In the event he came to the conclusion that it was a technical term and could best be explained by experts. He then went on to accept the view of a witness whom he regarded as an expert in town planning that the expression is used and understood by such experts, apparently among themselves, as meaning that the only buildings permitted in a zone which is so described are detached and semi-detached houses used for private residential purposes. If this conclusion was correct of course he was quite right in making the order for which Mr. Ng was asking.

With great respect, however, I am unable to agree that the expert evidence in question was admissible or that the conclusion to which it led was a correct one.

The expression is used by the Town Council as part of a plan which has statutory authority and which in the ultimate analysis cannot be differentiated from any other form of legislation such as Bye-laws enacted by a subordinate law-making body. It is, moreover, legislation affecting the user of land and affecting it by placing restrictions on the title which run with the land and not merely placing personal obligations on the owner for the time being. As was said by Cozens-Hardy M.R. in the case of *Marquis Camden v. Commissioners of Inland Revenue*⁽¹⁾:-

"The duty of this Court is to interpret and give full effect to the words used by the Legislature, and it seems to me really not relevant to consider what a particular branch of the public may or may not understand to be the meaning of those words. It is for the Court to interpret the statute as best they can. . . . to say we ought to allow evidence to be given as to whether there is any such technical meaning, to be followed up,

A of course, by evidence as to what that special meaning is, would I think be going entirely contrary to that which seems to be the settled rule of interpretation."

The expression, therefore, is to be interpreted in accordance with the ordinary canons of legal interpretation. What we have to ask is not what persons professionally engaged in the pursuit of town planning mean by it when discussing their own *mystique* among themselves but what meaning would it convey as to the intention of the Town Council when it made the Plan to a prospective purchaser of land or his legal advisers.

In that light the words "open development" by themselves mean very little. Nor do they constitute a term of art. As was said by Willes J., in the case of *Mansell v. The Queen*⁽²⁾:-

"It is incumbent on those who say that any word is a term of art.....to show that it has been so held."

Nor does the Enactment itself provide the words with any statutory definition, indeed they do not occur anywhere in the Enactment.

The dictionary meaning of "develop" in relation to land as "to bring out its latent capabilities" has received the blessing of Scrutton L.J. in the case of *Commissioners of Inland Revenue v. Duke of Devonshire*⁽³⁾. But to speak of "open" development without regard to any context is either in itself meaningless or is a contradiction in terms for it comes in effect to saying that either there is no restriction on development at all or that the only restrictions are those which are to be found elsewhere as in the original conditions of the Grant.

In the circumstances we must pass from our own knowledge of the meaning of words and from our searches in the dictionaries and other authorities to an examination of the Plan itself and of the provisions of the statute under which it has been enacted.

Before doing so, however I would pause to make certain preliminary observations which would seem to be relevant. It should be remembered that apart from the town planning provisions of the Town Boards Enactment the Town Council has very extensive powers under section 14 to make Bye-laws for the regulation and control of buildings and under Part VII to approve or withhold approval of plans of individual buildings. In effect as regards individual buildings the town planning provisions restrict rather than enlarge these powers of the Council for by section 145 the Council must, where an approved Plan exists, refuse to approve plans for any building which are not in conformity with the approved Plan irrespective of whether or not the proposed building is in contravention of any Bye-law and irrespective of any views they may have as to the merits of an individual building.

This consideration leads to two conclusions as to the effects of enacting an approved Plan, as here, for part only of a town. One is that the Council's previous discretion is to be limited in respect of the whole of the land included in the

Plan. The other is that any area in respect of which it is intended the Council's previous discretion should be retained has been left outside the area of the Plan.

As regards the 60% of the Town of Ipoh that lies within the area of the Plan B.3 I return now to the consideration of the Plan itself and the provisions of the Enactment under which it is made of which the only ones of importance here are those of section 136(i). Paragraphs (a), (c), (d), (e) and (f) of that section which relate to streets, open spaces, Government buildings and so forth can for the purposes of the present argument be disregarded. The effect of paragraph (b), however, is that zones or districts may be set apart for any type or category of residential, commercial, industrial, agricultural or other use. The *ejusdem generis* rule is clearly not applicable to these words if only because there is no genus to be discerned and by reason of the use of the word "other" they must therefore be taken to include all possible kinds of user of land.

Passing now to the Plan, an area is demarcated for heavy industrial user and another area is demarcated for light industrial user. Presumably all industrial user is either light or heavy so that exhausts all possible types of industrial user and gives rise to the inference that industrial user is not permitted elsewhere in the area covered by the Plan. Then an area is described as a terrace dwelling area and another area is described as a shophouse area. There is no other type of residential area demarcated and terrace dwellings and shophouses do not exhaust the possible types of residential user. A shophouse, too, is a form of commercial user but shophouses do not exhaust all possible types of commercial user. The Plan itself does not purport to deal with agricultural or any other specified type of user.

We are not concerned here with agriculture but it is inconceivable that it was intended in 60% of the town to prohibit detached houses but permit terrace houses or to prohibit all commercial premises other than shops and to prohibit all shops without residential accommodation upstairs but to permit shophouses. This leads to the conclusion that what is meant by an open development area is an area in which the Council's discretion to approve buildings (and of course anybody's right to use land) is fettered to the extent that user for all industrial purposes or for shophouses or for terrace dwellings is prohibited. From this it would follow that residential premises which are discrete and separated from each other are not prohibited nor are commercial premises other than shophouses and support for this view is to be found if the word "open" be read as the antonym not of "closed" but of "close".

A night-club clearly constitutes a commercial user of land and a hotel clearly constitutes either commercial or residential user, it is immaterial which. Neither of them constitutes an industrial user of land nor is either of them or a combination of both of them a shophouse or a terrace

A dwelling. In the circumstances the conclusion is inescapable that so far as the approved Plan is concerned an establishment combining both these things is permissible in, and indeed only permissible in, the open development area, and therefore the Town Council, subject to that restriction, are at liberty to grant such building permission for such an establishment as they see fit and again subject to that restriction the Chairman of the Town Council is at liberty to issue such licence as he may see fit. I would therefore allow the appeal and set aside the Order made by Smith J.

B There remains the question of costs. Normally these would follow the event. In view, however, of an incident which at this stage I can only regard as extraordinary I would be reluctant to deal with the question without hearing what counsel have to say.

C Smith J. made the Order appealed against on 6th January, 1960. Notice of Appeal was filed on 18th January, 1960, and the Memorandum of Appeal was filed on 7th March. The hearing of the appeal commenced on 11th April and was completed on 12th April when judgment was reserved. On 14th April, 1960, the Chairman of the Town Council, the second appellant, signed a document which has since been published in the Government Gazette which purports to give notice of a proposal under section 144 of the Enactment to amend the approved Plan in relation to Lots Nos: 37014 and 37015 only, that is to say only in relation to Madam Khoo's land the position of which is the subject matter in the appeal.

D The propriety of this step in itself is no concern of the Court. Some such step could have been taken when the question first arose as to the user of the land. Again it might have been taken when Smith J., made his Order and would have had the effect of making that Order so much waste paper. The second appellant, however, did not see fit to take that step previously. When faced with Smith J.'s Order he preferred to appeal against it and his election to appeal against it rather than use the Council's legislative power to nullify it could in the circumstances have been regarded as being made for the purpose of obtaining an authoritative opinion from the Court on the question of law involved.

E But to take such a step at the time when it was taken has all the appearances of treating what we have to say as so much waste paper in advance of our having said it and without knowing what it is going to be. This may not be contempt in the technical sense but on the face of it, it appears to be an act of the very greatest discourtesy. It has had, too, the effect of putting the unfortunate respondent to great expense by forcing him to incur costs which would not have been incurred had steps been taken to alter the zoning at an earlier stage. In the circumstances I think we are entitled to some explanation.

F Hill J.A.: I have read the judgment of the learned Chief Justice and I agree with his conclusions.

Smith J. was admittedly faced with a difficult problem, but with respect I consider the reliance he placed on the expert evidence was misplaced, even if such evidence was admissible, which I do not think it was.

It is my opinion too that the expression 'open development' is to be interpreted in accordance with the ordinary canons of legal interpretation and that it is not what experts and town planners mean by it among themselves.

I agree that the appeal should be allowed and that the order made by Smith J. should be set aside.

As Counsel will be given the opportunity to address this Court on the question of costs, I will refrain at this stage from commenting on the conduct of the second appellant referred to by the Chief Justice.

Good J.A.: The sole question before us in this appeal is: What did the Ipoh Sanitary Board (as it then was) mean by the expression "open development" in the draft town plan of Ipoh numbered "B3" which was approved by the Resident of Perak on 10th April, 1931 (F.M.S. G.N. 2846/31)?

The facts giving rise to this appeal have been fully set out in the judgment of My Lord the Chief Justice and I do not think it necessary to repeat them. I agree with his conclusion and that of Hill J.A. and with the reasons which have led to them. But because we have felt obliged to differ from the learned trial Judge I would add a few words of my own.

The crux of the matter lies in the approach to the question of construction. Smith J. based his construction of the expression "open development" on three considerations: (i) the opinion of experts; (ii) the wording of the reference on the plan itself; and (iii) the development which has taken place in practice in the town of Ipoh. With respect, I take the view that (ii), the wording of the plan, is the only valid consideration for the purpose of construction here.

The matters of evidence in respect of which the opinions of experts are relevant are set out in sections 45 to 50 of the Evidence Ordinance, 1950. Assuming that the professional opinions of town planners may properly be taken into consideration in ascertaining the intention of the Sanitary Board in 1931, evidence of these opinions might be relevant under section 45 if town planning is a science or an art, or they might be admissible under section 49 in order to determine the meaning of a term used by a particular class of people, i.e. town planners. But although it may be assumed that the Sanitary Board were acting on professional advice when they submitted draft Town plan No. B3 for the approval of the Resident, I do not think that it must necessarily be presumed or even that it is safe to presume, that they used the expression "open development" in the precise sense in which it is understood by town planners (if, indeed, it has any precise meaning at all; which on the evidence before the learned trial Judge is, to say the least of it, extremely doubtful). Moreover, Mr. Aitken's opinion was given in 1959 and

A Mr. Fairbank's paper, Exhibit R5, appears to have been written in 1955, but we have no means of knowing whether similar opinions were held or expressed in 1931.

B I do not consider that it is safe to draw any conclusions from the development which has actually taken place in Ipoh since the town plan was approved. The learned trial Judge was to a certain extent influenced by the fact that the Town Council in 1955 refused to permit a boarding house to be built at the junction of Tambun Road and Gopeng Road, but there is no evidence of circumstances from which any inference as to the Town Council's general policy can be drawn; nor, in my view, is any assistance on the question of construction to be derived from the circumstances that no first class hotel has in fact been built in an open development area.

C It follows that the meaning of the expression "open development" falls to be ascertained from the wording of the plan itself, and in this connection I find myself in complete agreement with the learned Chief Justice's analysis of the wording and with his conclusions as to its effect.

D Mr. Aitken in his evidence said: "There is no legal definition. It has come to mean detached and semi-detached houses as distinct from terrace houses. The definition understood is that it be used for private residential purposes." This was the construction adopted by the learned trial Judge, who said: "I find the words, 'open development', mean 'for detached or semi-detached private residences only'."

E This construction seems to me to be too narrow. If the Town Council desire to set apart a zone for what the house agents would call "desirable residences standing in spacious grounds", they have the necessary powers under section 136(i)(b) to ensure that the houses in any particular area are few and far between. I do not, however, think that "open" can bear this meaning in the context of the plan, nor do I think that such a construction is in keeping with the wording of the section, which refers to types or categories of use and not to types or categories of buildings.

F In my view the proper construction of the expression "open development" is that it means that the use for which the area is set apart is unrestricted except to the extent that it is restricted by necessary implication from the plan itself. The learned Chief Justice has enumerated the ten categories of use for which, in addition to 2,600 acres set apart for open development, zones of an aggregate area of 2,255 acres have been set apart. In my opinion, the plain and necessary implication is that, in the zone set apart for open development, development is permissible for any type or category of use other than the ten for which zoning provision has been expressly made in the plan.

G For these reasons, I, too, would allow the appeal. I agree with what My Lord the Chief Justice has proposed in regard to hearing Respondent's Counsel on the question of costs.

Appeal allowed.

Solicitors: Gibb & Co.; N. Sharma.